

RDB Revised Pretrial Form 01.27.05.wpd

[FOR USE IN ADVERSARY PROCEEDINGS AND CONTESTED MATTERS]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

_____)	Case No.
_____)	Chapter
)	
Debtor(s).)	
)	
_____)	
)	
_____)	
_____)	
)	
Plaintiff(s),)	
)	
vs.)	Adversary No. [omit in contested matters]
)	
_____)	
_____)	
)	
Defendant(s).)	
)	
_____)	

U.S. BANKRUPTCY COURT
Final Pretrial Conference Order
(Insert Case Number)
(Insert Case Name)

PRETRIAL ORDER

On _____, 20__, a pretrial conference was held in this case at
_____, Kansas, before the Honorable (Judge's Name), Bankruptcy Judge.

1. APPEARANCES

Counsel present and participating were (name of trial counsel) of (firm name) for the
plaintiff, (name of plaintiff), and (name of trial counsel) of (firm name) for the defendant, (name of
defendant).

2. JURISDICTION AND CONSENT TO FINAL ORDER

The parties to the above-captioned (adversary proceeding) (contested matter) stipulate to the
jurisdiction of the Court and consent to the trial and entry of a final order by the Bankruptcy Court.

3. NATURE OF CASE

[Please set out a brief, general statement of the nature of the case or matter, specifying
applicable statutory references; concisely identify the parties and their respective positions.]

4. AMENDMENTS TO PLEADINGS

There are no amendments to the pleadings.

U.S. BANKRUPTCY COURT
Final Pretrial Conference Order
(Insert Case Number)
(Insert Case Name)

(or)

_____ moved to amend his/her/its _____
to allege _____. Having heard the arguments of counsel and being fully informed,
said motion was (overruled) (sustained).

5. DISPOSITIVE MOTIONS

____ There are no DISPOSITIVE motions to be filed.

(or)

____ Dispositive motions have been filed and are pending as follows:

_____.

(or)

Dispositive motions will be filed by _____, 20____; responses/objections to same
will be filed twenty (20) calendar days thereafter pursuant to L.B.R. 7012.1 and/or 7056.1. When all
briefing is complete, the motions will be brought to the Court's attention for ruling.

6. STIPULATIONS

The parties hereto stipulate and agree that venue is properly laid in this District; that the United
States Bankruptcy Court for the District of Kansas has jurisdiction of the parties hereto and the subject
matter hereof and may try the adversary proceeding to final judgment; that all proper, necessary and

U.S. BANKRUPTCY COURT
Final Pretrial Conference Order
(Insert Case Number)
(Insert Case Name)

indispensable parties are parties hereto; and to the following facts:

A.

B.

C.

Unless the parties indicate otherwise, the law governing this case is that of the State of Kansas and the United States Bankruptcy Code.

7. ISSUES AND THEORIES

7.1 Plaintiff's first theory of recovery

A. Elements: In order to prevail [state theory of recovery, *e.g.*, exception to discharge], plaintiff must prove: [Identify each element of plaintiff's first theory of recovery, *e.g.*, false statement, knowingly made with intent to deceive, etc.]

B. Issues of fact: The following issues of fact relative to the above-referenced elements must be resolved at trial: [List all issues of fact relevant to the theory of recovery stated above.]

C. Issues of law: The following issues of law relative to the above-referenced elements must be resolved at trial: [List all issues of law relevant to the above-referenced theory of recovery.]

D. Mixed Issues of Fact and Law: The following mixed issues of fact and law relative to the above elements must be resolved at trial: [List all mixed issues of fact and law relevant to the above-referenced theory of recovery.]

U.S. BANKRUPTCY COURT
Final Pretrial Conference Order
(Insert Case Number)
(Insert Case Name)

7.2 Defendant's defenses (including affirmative defenses):

A. Elements: In order to prevail on [defense number 1] , defendant must prove:

[Identify elements.]

B. Issues of fact: The following issues of fact relative to the above elements must be resolved at trial: [All issues of fact relevant to defense number 1]

C. Issues of law: The following issues of law relative to the above elements must be resolved at trial: [All issues of law relevant to defense number 1]

D. Mixed issues of fact and law: The following mixed issues of fact and law relative to the above elements must be resolved at trial: [All mixed issues relevant to defense number 1]

7.3 Counterclaims; cross claims; and third party claims:

[Include elements, issues of fact, issues of law and mixed issues in the format specified above for each and every counter, cross or third-party claim.]

8. RELIEF SOUGHT

[State any non-monetary and monetary relief sought by any party, including amounts, *e.g.*, injunctive relief, determination of dischargeability, allowance of claim, secured status, or similar concept, including an explanation of the basis for the relief. Reference to elements is extremely helpful in this connection.]

U.S. BANKRUPTCY COURT
Final Pretrial Conference Order
(Insert Case Number)
(Insert Case Name)

9. BRIEF LIST OF CITATIONS

If the parties desire not to file trial briefs, they must include a list of citations. The lists of citations should include case and statutory citations and authorities supporting the parties' respective theories. Please list citations by identifying them with the appropriate issues of law as follows:

Issue of Law

1.

Citation

1.

2.

[Such a list should be included for each party with respect to each theory.]

10. LIST OF EXHIBITS; REMINDER OF COMPLIANCE

10.1 List of Exhibits

A. Plaintiff's Exhibits

Plaintiff has identified the following exhibits to be offered into evidence at the trial of this case:

Title of Document

Date

Number of Pages

1.

2.

U.S. BANKRUPTCY COURT
Final Pretrial Conference Order
(Insert Case Number)
(Insert Case Name)

3.

4.

B. Defendant's Exhibits

Defendant has identified the following exhibits to be offered into evidence at the trial of this case:

	<u>Title of Document</u>	<u>Date</u>	<u>Number of Pages</u>
1.			
2.			
3.			

10.2 Exchange of Exhibits

Not less than ten (10) calendar days prior to trial, each party shall serve upon each opposing party a legible copy of each exhibit the proponent intends to introduce at the time of trial.

10.3 Compliance with L.B.R. 9072.1

Counsel are to comply with Local Bankruptcy Rule 9072.1 and to furnish the Court with copies of all exhibits three (3) business days in advance of trial, together with an exhibit list in a form substantially in compliance with the form available from the Clerk's office. (When there are numerous exhibits, the Court requests that they be submitted in a three-ring binder with tabs or dividers for reference.)

U.S. BANKRUPTCY COURT
Final Pretrial Conference Order
(Insert Case Number)
(Insert Case Name)

11. WITNESSES

11.1 Plaintiff's Witnesses

The names and addresses of witnesses plaintiff intends to call are:

<u>Name</u>	<u>Address</u>
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A.

B.

C.

11.2 Defendant's Witnesses

The names and addresses of witnesses defendant intends to call are:

<u>Name</u>	<u>Address</u>
-------------	----------------

A.

B.

C.

11.3 Summary of Testimony

Each party shall file with this Order a concise summary of the anticipated testimony of each and every witness and any other evidence the party intends to offer. The Order will be returned if the testimony summaries are not attached.

U.S. BANKRUPTCY COURT
Final Pretrial Conference Order
(Insert Case Number)
(Insert Case Name)

12. TRIAL

12.1 This case will be set for trial on the Court's docket as soon as practicable after either the entry of this Order or this Court's ruling on any dispositive motions.

12.2 Trial will be to the Court/to the jury.

12.3 Estimated time of trial is ____ days.

12.4 Trial will be in [_____,] Kansas or such other place in the District where the case may first be reached for trial.

13. FURTHER PROCEEDINGS AND FILINGS

13.1 Status Conference

A pretrial status conference will be scheduled for _____; or the Court may schedule a status conference before the trial begins.

13.2 Trial Briefs

Each party desiring to submit a trial brief shall comply with the requirements of D. Kan. Rule 7.6 as it is made applicable to bankruptcy by L.B.R. 1001.1. Trial briefs shall be served and filed no less than three (3) business days in advance of trial. Each party filing a trial brief shall deliver an extra copy to the judge's chambers at the time of filing. Unless noted below, the Court does not require trial briefs, but finds them helpful, particularly if the parties anticipate that unique or difficult issues will arise during trial.

U.S. BANKRUPTCY COURT
Final Pretrial Conference Order
(Insert Case Number)
(Insert Case Name)

_____ If checked, the Court requires trial briefs be filed on the schedule set out above.

14. ORDERS OF THE COURT

14.1 Except by consent of the parties or by order of the Court to prevent manifest injustice, exhibits not listed and not described in this Order shall not be admitted into evidence and witnesses not listed and not identified in this Order shall not testify except in proper rebuttal.

Either party may offer the testimony of witnesses listed by the other and either party may offer into evidence exhibits listed by the other.

14.2 The pleadings in the above-captioned case are incorporated herein by reference, but this Order shall control the subsequent course of this action and shall not be modified except by order of the Court on its own motion or on motion of the parties to prevent manifest injustice.

14.3 The Court finds that this case is at issue, all discovery is complete and that the case will be ready for trial upon entry of this Order and any order(s) resolving any dispositive motions. This Order shall supersede the pleadings filed herein in defining issues for trial to the Court.

14. 4 The date of trial will be set by the Court after consultation with the parties and, as such, will be deemed to be agreed to among the parties. Therefore, a trial setting will likely not be continued. Parties seeking continuances are advised to refer to D. Kan. Rule 6.1(b) and to note that strict compliance with same is required as this rule has been adopted by this Court, L.B.R. 1001.1.

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APPROVED:

U.S. BANKRUPTCY COURT
Final Pretrial Conference Order
(Insert Case Number)
(Insert Case Name)

(Name) (Supreme Court No.)
(Firm Name)
(Address)
(Telephone No.)
Attorney(s) for Plaintiff

(Name) (Supreme Court No.)
(Firm Name)
(Address)
(Telephone No.)
Attorney(s) for Defendant